

FISCAL NOTE

SB 3177 - HB 3688

March 22, 2006

SUMMARY OF BILL: Removes federal and state antitrust law exemption otherwise applicable to private act metropolitan hospital authorities.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – This bill makes private act metropolitan hospital authorities subject to potential federal and state antitrust liability. The effect of removing the current antitrust exemption on the purchasing and contracting practices of such hospitals, as well as patient utilization and revenues, is complex and its fiscal consequences for local governments are not reasonably ascertainable. If current practices are not modified and are challenged and found to violate antitrust laws, local governments could experience an increase in expenditures exceeding \$100,000. If current practices are modified, local governments may incur higher costs for services and potential decreased revenues and expenditures resulting from fewer patients. If current practices are not modified and are found to be legal under antitrust laws, the impact of this bill would be minimal. All of these potential consequences are contingent and speculative.

Assumptions:

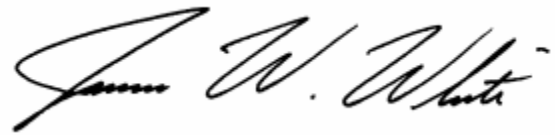
- In *Jackson, Tennessee Hospital Company, LLC v. West Tennessee Health Care, Inc.*, 414 F.3d 608 (6th Cir. 2005), the Sixth Circuit Court of Appeals held that Tenn. Code Ann. 7-57-502(c), authorizing private act metropolitan hospitals to exercise their powers "regardless of the competitive consequences," constituted an exemption from federal antitrust laws under the "state action" doctrine. *Parker v. Brown*, 317 U.S. 341 (1943). Although the issue was not before the Court in *Jackson*, this estimate assumes that Section 7-57-502(c) also creates an exemption from state antitrust laws to the extent that state antitrust laws would apply to the activities of these hospital authorities. This bill eliminates that exemption.
- The Office of the Comptroller states that it is unable to determine the potential impact of this bill on local governments.

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- The Bureau of TennCare states that this bill would have no impact on revenue or expenditures of the TennCare program.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director